



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

March 18, 2010

The President
The White House
Washington, D.C. 20500

Re: OSC File No. DI-08-1750

Dear Mr. President:

The Office of Special Counsel (OSC) received a disclosure from Charalambe “Bobby” Boutris, an Aviation Safety Inspector for the Department of Transportation (DOT), Federal Aviation Administration (FAA), assigned to the Southwest Airlines Certificate Management Office (SWA CMO), Irving, Texas. Mr. Boutris, who consented to the release of his name, disclosed that FAA officials knowingly allowed Southwest Airlines (SWA) to self-disclose a violation of an Airworthiness Directive (AD),¹ and to operate aircraft in passenger revenue service in an unsafe or unairworthy condition, in violation of Title 14 Code of Federal Regulations (CFR) Part 39.7, 39.11m 121.153(a)(2) and the Voluntary Disclosure Reporting Program (VDRP) requirements.² Mr. Boutris reported these allegations to FAA, which conducted a limited investigation. He alleged, however, that the investigation focused on SWA, not on the conduct of FAA officials. Mr. Boutris alleged that the conduct of FAA officials constituted a violation of law, rule or regulation, gross mismanagement, an abuse of authority, and a substantial and specific danger to public safety.

Mr. Boutris’ allegations were referred to the Honorable Mary E. Peters, then-Secretary of Transportation, on August 26, 2008, for an investigation pursuant to 5 U.S.C. § 1213(c) and (d). Then-Secretary Peters delegated responsibility for the investigation to DOT’s Office of Inspector General (OIG). On October 27, 2009, Secretary Ray LaHood submitted DOT’s report to OSC.

The investigation substantiated Mr. Boutris’ allegations, finding that Tom Hoover, Supervisory/Principal Maintenance Inspector (S/PMI) violated FAA policy by allowing SWA to self-disclose non-compliance with an AD governing window fasteners on 55 Boeing

¹FAA issues ADs to address unsafe conditions on products such as aircraft, aircraft engines, propellers, and appliances. AD requirements are mandatory and legally enforceable, and generally the result of aircraft accidents, a catastrophic component failure component, or safety recommendations from the National Transportation Safety Board.

²Airlines may voluntarily disclose non-compliance with an AD under the Voluntary Disclosure Reporting Program (VDRP). Under Advisory Circular (AC) 00-58A, which provides the guidelines for the VDRP, entities which operate under Title 14, such as airlines, may voluntarily disclose violations to FAA and receive a Letter of Correction in lieu of a civil penalty if the specific procedures for reporting non-compliance are followed. When a self-disclosure occurs, non-compliance with the AD must cease the date the non-compliance is discovered. This includes grounding affected aircraft until the requirements of the AD have been met.

737 aircraft when the requirements for the VDRP had not been met. The investigation also found that Mr. Hoover failed to ensure the disclosure was timely, that non-compliance had ceased upon detection, and that the cause of the non-compliance had been identified. Further, the investigation concluded that he failed to address SWA's continued operation of 6 non-compliant aircraft for 2 weeks after the airline was aware of the non-compliance, and after SWA had reported to FAA that the non-compliance had ceased. Finally, Mr. Hoover again violated FAA policy when he failed to ensure that SWA had identified and implemented corrective measures, as required by FAA, before issuing a final close-out Letter of Correction to the airline on February 13, 2008. The report notes that permitting SWA to self-disclose through the VDRP program and issuing a Letter of Correction allowed the airline to avoid a regulatory enforcement action and a civil penalty.

In addition, the OIG concluded that Bobby Hedlund, SWA CMO Manager, approved the Letter of Correction to SWA without reviewing the file. Notwithstanding the lack of evidence of impropriety, the investigation found that Mr. Hedlund should have been vigilant in his oversight responsibilities and ensured that the CMO employees were following FAA policy and enforcing the VDRP requirements. The report notes that he was under considerable scrutiny following other instances of SWA's knowing and continued operation of aircraft in non-compliant status, its misuse of VDRP, and the complicity of SWA CMO employees in SWA's misuse of the process. In response to the investigative findings, FAA proposed suspensions against both Mr. Hoover and Mr. Hedlund. The report also states that SWA's AD non-compliance was incorporated into a \$7.5 million settlement on March 2, 2009.

In his comments on the report, Mr. Boutris recounts that his first OSC disclosure involved allegations that FAA management violated FAA policy by allowing SWA to fly aircraft which had overflown AD inspection dates. As Mr. Boutris notes, the OIG substantiated those allegations and the culpable FAA managers were replaced by Mr. Hoover and Mr. Hedlund, whose conduct and adherence to FAA policy is at issue in this second disclosure. Once again, the OIG has determined that FAA managers are not complying with agency policy and regulations put in place to ensure aviation safety.

Mr. Boutris notes that in response to the report's findings FAA moved Mr. Hedlund to a management position at FAA's Southwest Regional Office, and Mr. Hoover to a temporary position as Manager of the Safety Analysis and Evaluation Branch. In taking these actions, it appears that FAA has promoted, or at a minimum has given the appearance of promoting, the FAA managers responsible for the non-compliance in this case. Given Mr. Hoover's failure to enforce FAA's safety requirements highlighted by the OIG's investigation, his assignment to an FAA office Aviation Inspectors rely on for assistance in reporting non-compliance and safety concerns is of particular concern. By rewarding those who violate FAA policy on safety issues, Mr. Boutris writes, FAA fails to hold its employees accountable and seems, instead, to condone misconduct. Without accountability, safety suffers.

Mr. Boutris concludes his comments by noting that most of the major safety issues regarding the air transportation system have been brought to light by aviation safety

The President

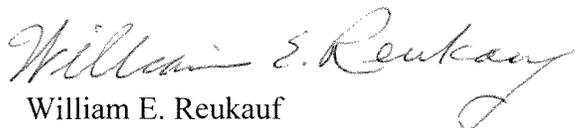
Page 3

inspectors like him. He remains committed to his job and serving the public by fulfilling his inspection duties as he has taken an oath to do. Mr. Boutris states that, as public servants, FAA should never take advantage of the public trust. He urges FAA to hold its employees accountable and to change the negative culture of FAA management toward whistleblowers that allows whistleblowers to be wrongfully targeted and subjected to retaliation.

Finally, OSC reviewed the original disclosure, the agency's report, and the whistleblower's comments. Based on that review, OSC determined that the agency's report contains all of the information required by statute and its findings appear to be reasonable. We note with concern, however, FAA's willingness to continue to vest managers who have shown a disregard for agency policy on safety with continued oversight responsibilities and safety-related duties. This second investigation has shown that some FAA managers continue their willingness to look the other way rather than enforce compliance with programs such as the VDRP. If meaningful change is to occur FAA managers must be held accountable for their complicity with airline non-compliance. By doing so, FAA would provide needed support to aviation safety inspectors and would signal its managers as well as the airlines that the agency's values of safety, quality, and integrity in serving the public interest will not be compromised.

As required by law, 5 U.S.C. § 1213(e)(3), OSC has sent copies of the report and Mr. Boutris' comments to the Chairmen and Ranking Members of the Senate Committee on Commerce, Science, and Transportation, and the House Committee on Transportation and Infrastructure. OSC has also filed copies of the agency's report and Mr. Boutris' comments in our public file and closed the matter.

Respectfully,



William E. Reukauf
Associate Special Counsel

Enclosures